

DUPLICATE

Second Amendment to Lease Agreement

(CITY Document RR-267979)

This Second Amendment to Lease Agreement is executed by and between the City of San Diego, ("CITY"), as Lessor, and TORREY PINES CLUB CORP., formally known as Vincent McKee Sports, Inc. ("LESSEE"), as Lessee.

The above parties have entered into a lease agreement dated March 30, 1987 and filed in the Office of the City Clerk of the City of San Diego as Document RR-267979. The CITY and LESSEE wish to modify and clarify certain provisions of this lease.

The original agreement limited the LESSEE's involvement of the driving range to that of operator only. It is now desired by both parties to modify this arrangement to have the LESSEE take the complete responsibility of all of the operations of the driving range. This includes but is not limited to: maintenance of the facility, including tees and landing areas; maintenance of all fences and buildings at the driving range; responsibility for errant golf balls hit from the driving range; and all other normal duties and responsibilities of operating a first class driving range.

CITY and LESSEE hereby agree to amend the above referenced lease as follows:

1. Section 1, Uses, Paragraph 1.06, is hereby amended to read; Throughout the term of this Lease Agreement, LESSEE shall provide competent management and operation of the leased premises to the reasonable satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean managing and operating the leased facilities in accordance with the terms of this lease in a manner that is fiscally responsible and comparable to the operation of similar municipal operations.
2. Section 2, Term, Paragraph 2.01, is hereby amended to read; The term of this agreement shall commence on January 1, 1988, and shall be twenty-five (25) years, with one (1) ten (10) year renewal option. This option must be exercised by the LESSEE no later than twenty-four (24) months prior to the expiration of the original term of the lease and no sooner than thirty-six (36) months before the expiration of the original term of this lease. To exercise this option, the LESSEE must be in good standing with the City and not in default under any of the terms of the lease agreement (as amended) and be able to prove to the reasonable satisfaction of the City Manager that the LESSEE has the capability of operating the businesses on the leasehold.

In the event that the LESSEE sells (through stock transfer or lease assignment), assigns, conveys, or encumbers its leasehold estate and/or its improvements in accordance with Sections 4.02 Assignment and Subletting and/or 4.03 Encumbrance, the LESSEE shall pay the CITY an amount equal to five percent (5%) of the funds received from sale, assignment, or conveyance or five percent (5%) of the funds received from an encumbrance that is not specifically used for capital improvements on the leased premises.

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3. Section 2, Term, Paragraph 2.04, is hereby amended to read; Failure to maintain physical facilities and provide competent management of the leased premises to the reasonable satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean managing and operating the leased facilities

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SAN DIEGO, CALIFORNIA

in accordance with the terms of this lease in a manner that is fiscally responsible and comparable to the operation of similar municipal operations.

4. Section 3, Rent, Paragraph 3.02c., item 4 be amended to read; Eleven Percent (11%) of all gross income derived from the use of the driving range. Commencing on January 1, 1998, and every five (5) years thereafter, the percentage rent for the driving range activity shall be increased by 1/2%. For example, on January 1, 1998 the rent will be increased to 11 1/2%, 2003 to 12%, 2008 to 12 1/2%, etc. However, until gross revenues reach \$26,000.00 for two (2) consecutive months or until July 1, 1993, whichever occurs first, the rent shall be calculated at five percent (5%) of the gross revenues derived from the driving range.
5. Section 3, Rent, Paragraph 3.02c., items 1, 2, 3, 5, 6, 7; all the percentages in the hereinmentioned section shall remain the same and in full force and effect as follows:
 - A. THIRTY PERCENT (30%) of all gross income from the rental of motorized golf carts (electrical and gas), and pull carts.
 - B. SEVEN PERCENT (7%) of all gross income from pro shop sales.
 - C. SEVEN PERCENT (7%) of all gross income from the rental and repair of golf clubs.
 - D. FIVE PERCENT (5%) of all gross income from golf instruction and golf instructional rounds performed by the LESSEE.
 - E. TEN PERCENT (10%) of all other income from any source derived from the use of the premises.
 - F. FIFTY PERCENT (50%) of commissions or any other compensation paid to LESSEE, or its sublessees, permittees or licensees for the right to install or operate coin-operated vending, game, or service machines or devises on the premises, including telephones, 10% of the gross income of any such coin-operated machines or devises owned, rented, or leases by LESSEE, whether such machines are maintained and operated by LESSEE or by sublessees of the use on the premises.
6. LESSEE shall construct and install the fence extensions along the west and east fences bordering the driving range described in Exhibit A (proposal from Manhire Construction, Inc.) attached hereto and incorporated by reference herein. In consideration for same, CITY shall provide a one-time rent credit in an amount not to exceed Twenty-five Thousand Dollars (\$25,000.00) or Fifty Percent (50%) of the actual construction costs for the fence improvements whichever is less.
7. Section 3, Rent, Paragraph 3.02f., is hereby added to the lease; (f) "With prior written approval by the City Manager, which approval may or may not be granted at the sole and absolute discretion of the City Manager, ticket sales

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[Signature]
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for charitable purposes, may be excluded from gross sales for the calculation of percentage rents. However, said sales shall not exceed 5% of gross income in any given month.

8. Section 5, Insurance Risk, Paragraph 5.05, is hereby added to the lease; 5.05 "It is expressly agreed by the parties hereto that any and all claims hereafter arising from the use of the driving range are the sole responsibility of the LESSEE and his insurance carrier, as specified in Section 5.02a. LESSEE agrees to hold the CITY harmless from all such claims.
9. Section 7, General Provisions, Paragraph 7.04, Nondiscrimination, is hereby amended to read; LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status or physical disability in LESSEE'S use of the premises, including, but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment. *RHM*
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10. Section 7, General Provisions, Paragraph 7.05, Affirmative Action, is hereby deleted and is restated as follows: Equal Opportunity; LESSEE shall comply with the City's Equal Opportunity and Minority and Women Business Enterprise Contracting Programs, approved by the City Council, and filed with the City Clerk as Document RR-262633. LESSEE shall submit a Workforce Analysis Report and a Certificate of Compliance with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal or State laws and regulations hereinafter enacted. LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this agreement. *RHM*
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11. Section 7, General Provisions, Paragraph 7.10, second sentence, is hereby amended to read; The City Manager reserves the right to approve all prices for goods and services charged by LESSEE and its sublessees, provided however, that LESSEE and its sublessees shall not be required to sell any merchandise at a loss.
12. Section 7, General Provisions, Paragraph 7.13, is hereby deleted in its entirety.
13. Section 7, General Provisions, Paragraph 7.17, Tournament Operation, first sentence is hereby amended to read; It is expressly understood that any PGA, LPGA or Senior PGA Tournament, such as the Buick Invitational of California will be conducted on the premises.
14. Nothing contained herein is intended to alter or amend any other covenant or condition of said lease agreement.
15. This amendment shall be effective on January 1, 1993.

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INITIAL *RHM*
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Signatures:

City of San Diego

Date AUG 02 1993

By [Signature]
City Manager or Designee

TORREY PINES CLUB CORP.

Date DECEMBER 30-92

By [Signature]

APPROVED AS TO FORM AND LEGALITY THIS 10 DAY OF August, 1993.

JOHN W. WITT, CITY Attorney

By [Signature]
Deputy

NRS:rc(1)
11-17-92

Norman
Swain
MS 51-A

(R-94-84)

RESOLUTION NUMBER R- 282439

ADOPTED ON AUG 02 1993

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized to execute, for and on behalf of The City of San Diego, a Second Amendment to Lease Agreement with TORREY PINES CLUB CORPORATION for the operation and maintenance of Torrey Pines Golf Course, which amendment provides that the lessee shall assume maintenance responsibilities and provide liability insurance for the driving range operations at Torrey Pines Golf Course, and which amendment further provides for a decrease from thirty percent of gross income to eleven percent of gross income in the rent from the driving range operations, and which amendment includes an option to extend the lease term for ten years beyond the current expiration date of 2012, under the terms and conditions set forth in that Second Amendment to Lease Agreement on file in the office of the City Clerk as Document No. RR- 282439.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Chief Deputy City Attorney

HOV:ps
07/19/94
Or.Dept:Prop.
Job:220593
R-94-84
Form=r-t

COPY

FIRST AMENDMENT TO LEASE AGREEMENT

The First Amendment executed by and between the City of San Diego, a municipal corporation (CITY), Lessor, and Vincent-McKee Sports, Inc., Lessee.

WHEREAS, the parties heretofore have entered into that certain lease agreement dated March 30, 1987 and filed as Document RR-267979 in the Office of the City Clerk.

WHEREAS, the City has closed the Torrey Pines Golf Course periodically for maintenance, construction and renovation during the period from August 1988 to June 1989.

WHEREAS, these closures have had a significant fiscal impact on Lessee's operations.

WHEREAS, the parties wish to provide Lessee rent relief for future golf course closures resulting from Lessor's construction, maintenance and renovation of the golf course.

NOW, THEREFORE, CITY and Lessee hereby agree:

1. That Section 3, Rent, Paragraph 3.10, is hereby added to the lease.

3.10 Rent Credit for Closures

For each day 9 holes, or more, are closed on either course for maintenance, construction or renovation work the Lessee shall receive a rent credit of \$700 per day.

This rent credit shall apply only for closures due to construction, maintenance or renovation work. Rent credits will not be granted for inclement weather closures, events beyond the City's control such as Acts of God, or for tournaments, etc. Rent credits will not apply to closure after 3 p.m. or the "twilight time," namely four hours before sunset. Rent credits will not be given if work is being done on the one hole and temporary arrangements are made to play around or thru the work area.

2. Nothing contained herein is intended to alter or amend any other covenant or condition of said lease agreement.
3. This amendment shall be effective July 1, 1989.

DOCUMENT NO. RR-274980

FILED JAN 16 1990

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

The CITY OF SAN DIEGO

Date JAN 16 1990

By Robert J. Collins
Supervising Property Agent
for the City Manager

VINCENT-MCKEE SPORTS, INC.

Date 11/24/89

By Tim Mooney

Date 11/24/89

By J. H. McKee

APPROVED as to form and legality this 22 day of January, ¹⁹⁹⁰~~1989~~.

JOHN W. WITT, City Attorney

By [Signature]
Deputy City Attorney

CVS:baa(6)108
10-18-89

RESOLUTION NUMBER R- 274980

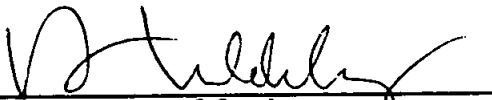
ADOPTED ON JAN 16 1990

BE IT RESOLVED, by the Council of The City of San Diego, that a rent credit in the amount of \$75,000 to Vincent-McKee Sports, Inc., the golf shop concessionaire at the Torrey Pines Golf Course, for losses incurred due to closures of the golf course for maintenance, construction and renovation projects from August 1988 to June 1989, is hereby authorized

BE IT FURTHER RESOLVED, that the City Manager is hereby authorized to execute, for and on behalf of The City of San Diego, a First Amendment to the lease agreement to require the City to grant a rent credit of \$700 per day for each day nine or more holes are closed in the future for maintenance, construction or renovation projects at Torrey Pines Golf Course, under the terms and conditions set forth in that first amendment on file in the office of the City Clerk as Document No. RR- 274980.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:skc
12/01/89
Or.Dept:Prop.
Job:220593
R-90-892
Form=r.none

Passed and adopted by the Council of The City of San Diego on

JAN 16 1990 by the following vote:

YEAS: Wolfsheimer, Roberts, Hartley, Pratt, Bernhardt, Henderson,
McCarty, Filner, O'Connor.

NAYS: None.

NOT PRESENT: None.

AUTHENTICATED BY:

MAUREEN O'CONNOR
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: TENA M. MARTIN, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true
and correct copy of RESOLUTION NO. R- 274980, passed
and adopted by the Council of The City of San Diego, California
on JAN 16 1990.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: Tena Martin, Deputy